

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

MARK KOZIK, et al.

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No. 08 CR 049-01

Judge Charles R. Norgle, Sr.

MOTION FOR PRODUCTION OF 404(B) MATERIAL

Defendant, MARK KOZIK, by his attorney, CLARKE PATRICK DEVEREUX, pursuant to Rule 404(b) of the Federal Rules of Evidence, as well as the Due Process and Effective Assistance of Counsel provisions of the Fifth and Sixth Amendments to the Constitution of the United States, respectfully moves this Court to require the government to disclose all allegedly similar crimes, wrongs or acts allegedly committed by Defendant on which it intends to rely at trial to prove motive, scheme, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

In support of this motion, Defendants, through counsel, show to the Court the following:

1. Defendant requests that this Court enter an order requiring the government to disclose immediately the following particulars of any “other crimes” evidence:

- a. The dates, times, places and persons involved in said crimes, wrongs, or acts;
- b. A detailed description of said crimes, wrongs or acts;
- c. The statements of each participant in said other

crimes, wrongs, or acts;

- d. The documents which contain evidence of said other crimes, wrongs or acts, including a statement describing when the documents were prepared, by whom the documents were prepared, and who has had possession of the documents since the alleged commission of the crimes, wrongs or acts; and,
- e. A statement of the issue or issues to which the government believes such other crimes, wrongs, or acts evidence may be relevant under the Fed. R. Evid. 404(b).

2. This request, it must be noted, includes evidence that the government intends to use in any fashion whatsoever, including, but not limited to, use in cross-examination, rebuttal and its case-in-chief.

3. Rule 404(b) requires reasonable notice in advance of trial of the general nature of any such evidence the government intends to introduce at trial. While Rule 404(b) provides neither a specific time of notice nor a specific form of notice, the advisory committee notes to the 1991 amendment make clear that the time and form of disclosure depend largely on the circumstances of the particular case. See also, *United States v. Perez-Tosta*, 36 F.3d 1552 (11th Cir. 1994).

4. Defendant requests, therefore, that he be provided with notice of the government's intent to rely on 404(b) material at least thirty (30) days in advance of trial.

WHEREFORE, based on the foregoing, Defendants respectfully move this Court for the entry of an order requiring the government to give notice of its intent to use 404(b) material at least thirty (30) days in advance of trial.

Respectfully submitted,

s/ Clarke Patrick Devereux
CLARKE PATRICK DEVEREUX,
Attorney for Defendant.

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CERTIFICATE OF SERVICE

I hereby certify that foregoing Defendant MARK KOZIK's **MOTION FOR PRODUCTION OF 404(B) MATERIAL** was served on March 1, 2008, in accordance with Fed.R.Crim.P.49, Fed.R.Civ.P.5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

s/ Clarke Patrick Devereux
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